

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DASTIME GROUP LIMITED, et al.,

Petitioners,

v.

MOONVALE INVESTMENTS LIMITED,
et al.,

Respondents.

Case No. 17-cv-01859-JSW

**ORDER GRANTING PETITIONERS'
MOTION FOR DEFAULT JUDGMENT
AGAINST MOONVALE
INVESTMENTS LIMITED**

Re: Dkt. No. 44

Now before the Court is Petitioners' motion for default judgment as to Respondent Moonvale Investments Limited ("Moonvale"). The Court has considered Petitioners' motion, the record in this case, and the relevant legal authority, and the Court finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing currently scheduled for November 17, 2017, and GRANTS Petitioners' motion for default judgment.

BACKGROUND

The background of this case is more fully laid out in the Court's prior order granting Petitioners' petition to confirm an arbitration award against Respondent Peter Kiritchenko. *See Dastime Group Ltd v. Moonvale Investments Ltd.*, No. 17-cv-1859-JSW, 2017 WL 4712179 (N.D. Cal. Oct. 11, 2017). In short, Petitioners filed the instant action seeking to confirm an arbitration award which found Kiritchenko and Moonvale to be jointly and severally liable to Petitioners for \$5,700,132.10 in attorney's fees. Kiritchenko appeared and filed a motion to vacate the award, which has since been denied. *See id.* at *9. Moonvale, however, has not appeared.

On May 23, 2017, the Court granted Petitioners' motion seeking authorization for alternative service on Moonvale. (Dkt. No. 23.) The Court authorized service on Moonvale via

1 service on (1) Mr. Aleksander Gruzman, Esq. (Moonvale’s attorney at the underlying arbitration);
2 and (2) Moonvale’s registered agent. (*Id.* at 4.) Consistent with this order, Petitioners served
3 Moonvale in May 2017. (Dkt. Nos. 24, 26.) On June 30, 2017, the Clerk entered default as to
4 Moonvale. (Dkt. No. 36.)

5 ANALYSIS

6 Before assessing the merits of a motion for default judgment, a court must confirm that it
7 has subject matter jurisdiction over the case, personal jurisdiction over the parties, and that service
8 was sufficient. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). Here, the Court has jurisdiction
9 over this action under 9 U.S.C. § 203, as this action involves an arbitral award that falls under the
10 Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Further, the Court
11 finds that it has personal jurisdiction over Moonvale (a British Virgin Islands corporation). This
12 action seeks to confirm an arbitration award that resulted from an arbitration Moonvale itself
13 brought in California. Further, this arbitration was brought pursuant to an agreement in which
14 Kiritchenko (Moonvale’s assignor) consented to the jurisdiction of the “state and federal courts
15 located in California.” Finally, regarding the propriety of service, the record reflects that
16 Petitioners have served Moonvale consistent with the Court’s order authorizing alternative service.

17 In assessing the merits of a motion for default judgment, the Court considers the following
18 factors:

19 (1) the possibility of prejudice to the plaintiff, (2) the merits of
20 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
21 the sum of money at stake in the action[,] (5) the possibility of a
22 dispute concerning material facts[,] (6) whether the default was due
to excusable neglect, and (7) the strong policy underlying the
Federal Rules of Civil Procedure favoring decision on the merits.

23 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted).

24 First, Petitioners will be prejudiced if default judgment is not entered as to Moonvale. As
25 discussed in the Court’s prior order, the Court is unable to enter judgment against Respondent
26 Kiritchenko until the claim against Moonvale is resolved. *See Dastime Group*, 2017 WL
27 4712179, at *9. Moonvale has apparently refused to appear in this action and oppose confirmation
28 of the arbitral award. Accordingly, without entry of default judgment, Petitioners will be denied

1 confirmation of the award.

2 As to the merits of Petitioners' "claim" and sufficiency of the petition, by its prior Order
3 the Court confirmed the arbitration award as to Kiritchenko and refused to vacate that award.
4 Based on the Court's review of the record, the underlying agreement, and the arbitration award,
5 the Court sees no basis for refusing confirmation of the award. The record reflects that
6 Kiritchenko entered into a valid arbitration agreement and Moonvale, as Kiritchenko's assignee,
7 instituted the arbitration award pursuant to that agreement. Accordingly, these factors support
8 entry of default judgment.

9 Fourth, while the arbitration award involves a large sum of money (over \$5 million), this
10 factor does not weigh against entry of default judgment given the nature of the action and the
11 arbitrator's findings regarding Petitioners' entitlement to attorney's fees. *Cf. Lehman Bros*
12 *Holdings, Inc. v. Bayporte Enters., Inc.*, No. 11-cv-0961, 2011 WL 61410279, at *7 (N.D. Cal.
13 Oct. 7, 2011) ("[T]he amount must not be disproportionate to the harm alleged.").

14 Fifth, there is a low likelihood of any dispute as to material facts given the nature of this
15 action and Moonvale's apparent unwillingness to appear and challenge the arbitration award. *Cf.*
16 *Todd v. Shipyards Corp. v. Cunard Lines, Ltd.*, 943 F.2d 1056, 1060 (9th Cir. 1991) (noting that
17 federal court review of arbitration decisions is "strictly limit[ed]").

18 Sixth, there is no indication that Moonvale's default is the result of excusable neglect.
19 Moonvale was not only served with the summons and complaint, but also Petitioners' motion for
20 default judgment on October 23, 2017. (Dkt. No. 45.) Despite this, Moonvale has still not
21 appeared. *See Craigslist, Inc. v. Kerbel*, No. 11-cv-3309 EMC, 2012 WL 3166798, at *23 (N.D.
22 Cal. Aug. 2, 2012) ("[I]t is unlikely that Defendant's default was due to excusable neglect,
23 especially when Plaintiffs served not only the summons and complaint but also the request for
24 entry of default on Defendant but still served no response.")

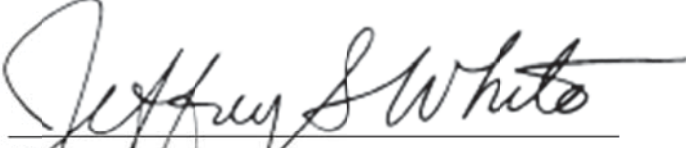
25 Finally, while there is a strong policy underlying the Federal Rules that cases should be
26 decided on their merits, here Moonvale has simply refused to take part in the action. Accordingly,
27 an adjudication on the merits as to Petitioners' claim against it is impossible.

28 For the following reasons, the Court finds that Petitioners are entitled to default judgment

1 against Moonvale and accordingly GRANTS Petitioners' motion. The Court will enter a separate
2 judgment and the Clerk is ORDERED to close the file.

3 **IT IS SO ORDERED.**

4 Dated: November 3, 2017

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6 JEFFREY S. WHITE
7 United States District Judge
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